

E-002/CN-94-795 ORDER FOR HEARING

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Don Storm
Tom Burton
Marshall Johnson
Cynthia A. Kitlinski
Dee Knaak

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of the Application of Northern
States Power Company for a Certificate of
Need for Approximately 100 Megawatts of
Wind Generation

ISSUE DATE: October 20, 1994

DOCKET NO. E-002/CN-94-795

NOTICE AND ORDER FOR HEARING

PROCEDURAL HISTORY

I. The Application

On September 23, 1994, Northern States Power Company (NSP or the Company) filed an application for a certificate of need to build 100 MW of wind generation on a portion of a topographically elevated area known as Buffalo Ridge in southwestern Minnesota.

On October 6, 1994, the Commission issued its ORDER GRANTING EXEMPTION FROM CERTAIN FILING REQUIREMENTS AND VARIANCE.

On October 6, 1994, NSP filed an addendum to its certificate of need application: the Certificate of Site Compatibility Application previously filed with the Minnesota Environmental Quality Board (EQB) on September 27, 1994.

A copy of the Company's application is on file in the offices of the Department of Public Service, Suite 200, 121 Seventh Place East, St. Paul, Minnesota 55101-2145 and is open for public inspection during regular office hours.

On October 13, 1994, the Commission met to consider this matter.

FINDINGS AND CONCLUSIONS

II. Jurisdiction

The Commission has jurisdiction over applications for certificates of need for large generating facilities under Minn. Stat. § 216B.243 (1992). The statute requires the Commission to hold at least one public hearing under the Administrative Procedure Act before acting on this or any other application for a certificate of need. Minn. Stat. § 216B.243, subd. 4 (1992).

III. Referral for Contested Case Proceedings

The Commission has found the Company's application substantially complete as of the date of its filing, September 24, 1994. The Commission's decision on the merits of the application, therefore, is due six months from that date, as required by Minn. Stat. § 216B.243, subd. 5 (1992). The Commission must now determine how it will proceed with this matter.

In its cover letter for the application, NSP requested that the Commission conduct the proceedings in this matter as an "informal proceeding" as defined in Minn. Rule, part 7829.0100, subp. 8. NSP indicated that no statute requires a contested case hearing and that Chapter 7847 of Minnesota Rules, which appeared to require a contested case proceeding, has been repealed.

The Company also argued that there are no material facts in dispute with respect to the application which require evidentiary hearings for resolution.

The Commission finds that there are practical considerations that make conducting the proceeding as a contested case desirable:

First, contested cases are designed for situations in which facts may be in dispute. Despite NSP's argument that there are no material facts in dispute with respect to this application, there is no way that can be known with certainty at the present time. If the proceeding were started as an informal proceeding but factual disputes arose later, the proceeding could take more time than if it were started as a contested case.

Another concern is that Minn. Stat. § 216B.243, subd. 4 indicates that the Commission "shall hold at least one public hearing pursuant to chapter 14." The hearing probably should be held in the Lake Benton area, since that likely is the area where the public would be most affected by any positive and negative impacts of the project. As a practical matter, it would be administratively convenient for such a public hearing to be conducted by an Administrative Law Judge.

Finally, the Commission notes that it has been able to finish certificate of need cases conducted as contested case proceedings well within the six-month statutory guideline when there has been little or no opposition to the proposed facilities. Moreover, due to the care and time required in preparing the environmental report (Minn. Rules, Part 4410.7100), there may be little or no opportunity to shorten the proceeding by conducting it as an informal proceeding.

Therefore, the Commission will begin this proceeding as a contested case and refer it to the Office of Administrative Hearings for contested case proceedings.

III. Issues to be Addressed

A. Substantive Issues

Minn. Stat. § 216B.243 (1992) and Minn. Rules, parts 7849.0010- 7849.0400 set forth criteria which must be met to establish need for proposed large energy facilities, including the proposed wind generation plant. Parties to this proceeding shall address whether the proposed facility meets these criteria.

B. Case Management Issues

Because this case is subject to a six-month statutory deadline, and because construction must begin soon if the proposed plant is to meet the statutory deadline (addition of 100 MW of wind generated power under contract by the end of 1996, thereby entitling NSP to use an additional 4 casks at Prairie Island), the Commission has referred this application for contested case proceedings as soon as it was found to be substantially complete.

To further expedite thorough examination of this application, the Commission will

- require that a prehearing conference be held at a date, time, and location to be determined by the Administrative Law Judge in consultation with Commission Staff
- direct the Department to initiate an investigation to determine the reasonableness of granting a certificate of need to the applicant
- urge the Department to expedite its preparation of the draft environmental report under guidelines specified in Minn. Rules, Part 4410.7100¹

¹ In a separate Order, the Commission has directed the Department to prepare this report, distribute it, and respond to public comments on it. See ORDER ACCEPTING FILING AND

- direct NSP to facilitate in every reasonable way the Department's investigation
- direct its Staff to work with the Administrative Law Judge in selecting suitable locations for the public hearing and the evidentiary hearings (if any) on the application
- direct that NSP provide notice of the public and evidentiary hearings in newspapers of general circulation at least ten days prior to the start of the hearings, that such notice be in the form of visible display ads, that the applicant obtain proofs of publication of such ads from the newspapers selected, and that the applicant consult with Commission staff on the timing and text of such ads prior to publication.

IV. Public Participation

Minn. Stat. § 216B.243, subd. 4 (1992) encourages public participation in certificate of need proceedings. The statute requires at least one hearing to obtain public opinion on the application and requires the Commission to designate an employee to facilitate citizen participation in the hearing process.

The Commission has designated statistical analyst David L. Jacobson to facilitate and coordinate public participation in this proceeding. He may be reached by telephone at (612) 297-4562 and by FAX at (612) 297-7073. His address is Suite 350, 121 7th Place East, St. Paul, Minnesota 55101-2147.

Members of the public need not become formal parties to participate in the hearing process. They are encouraged to attend the public hearing(s) and to submit testimony and exhibits. Persons who cannot attend the public hearing(s) and wish to comment may submit written comments to the Administrative Law Judge. The Commission will require the Company to publish notice of the public and evidentiary hearings in newspapers throughout the state, to encourage public participation.

V. Procedural Outline

A. Administrative Law Judge

The Administrative Law Judge assigned to this case is Allan W. Klein. His address and telephone number are as follows: Office of Administrative Hearings, Suite 1700, 100 Washington Square, Minneapolis, Minnesota 55401-2138; (612) 341-7609.

B. Hearing Procedure

Hearings in this matter will be conducted in accordance with the Administrative Procedure Act, Minn. Stat. §§ 14.57-14.62 (1992); the rules of the Office of Administrative Hearings, Minn. Rules, Parts 1400.5100 to 1400.8400; the Commission's Rules of Practice and Procedure, Minn. Rules, Parts 7829.0100 to 7829.3200 and Minn. Rules, Parts 7849.0010 to 7849.0400. Copies of these rules and statutes may be purchased from the Print Communications Division of the Department of Administration, 117 University Avenue, St. Paul, Minnesota 55155, (612) 297-3000.

Under these rules formal parties may be represented by counsel, may appear on their own behalf, or may be represented by another person of their choice, unless otherwise prohibited as the unauthorized practice of law. They have the right to present evidence, conduct cross-examination, and make written and oral argument. Under Minn. Rules, part 1400.7000, they may obtain subpoenas to compel the attendance of witnesses and the production of documents.

Any person intending to appear at the hearing as a formal party must file a notice of appearance (Attachment A) with the Administrative Law Judge within 20 days of the date of this Notice and Order for Hearing. Failure to appear at the hearing may result in facts and issues being resolved against the party who fails to appear.

Parties should bring to the hearing all documents, records, and witnesses necessary to support their positions. They should take note that any material introduced into evidence may become public data unless a party objects and requests relief under Minn. Stat. § 14.60, subd. 2 (1992).

Any questions regarding discovery under Minn. Rules, parts 1400.6700 to 1400.6800 or informal disposition under Minn. Rules, part 1400.5900 should be directed to Rosellen Condon, Special Assistant Attorney General, Suite 350, 121 7th Place East, St. Paul, Minnesota 55101-2147, (612) 297-1852.

The times, dates, and places of public and evidentiary hearings will be set by order of the Administrative Law Judge after consultation with the Commission and intervening parties.

C. Parties and Intervention

Current parties to this proceeding are NSP and the Department of Public Service.

Other persons wishing to become formal parties to this proceeding shall promptly file petitions to intervene with the Administrative Law Judge. They shall serve copies of such petitions on all current parties and on the Commission. Minn. Rules, part 1400.6200.

D. Prehearing Conference

A prehearing conference will be held on Tuesday, November 22, 1994 at 9:30 a.m. in the Small Hearing Room, Public Utilities Commission, 121 7th Place East, Suite 350, St. Paul, Minnesota 55101-2147.

All parties and persons intending to intervene should attend the conference, prepared to discuss time frames and scheduling. Other matters which may be discussed include the scope of the hearing, the locations and dates of hearings, discovery procedures, and similar issues.

E. Time Constraints

Under Minn. Stat. § 216B.243, subd. 5 (1992), the Commission is required to act on the Company's application within six months of receipt of a substantially complete filing. The Commission asks the Administrative Law Judge to conduct contested case proceedings in light of these time constraints. Parties should note the six-month statutory time frame at the outset and be prepared for the expedited hearing schedule that time frame requires.

F. Application of Lobbying Provisions

The lobbying provisions of the Ethics in Government Act, Minn. Stat. §§ 10A.01 et seq. (1992), apply to certificate of need proceedings. Persons appearing in this proceeding may be subject to registration, reporting, and other requirements set forth in that Act. All persons appearing in this case are urged to refer to the Act and to contact the Minnesota Ethical Practices Board, telephone number (612) 296-1720, with any questions.

G. Ex Parte Communications

Restrictions on ex parte communications with Commissioners and reporting requirements regarding such communications with Commission staff apply to this proceeding from the date of this Order. Those restrictions and reporting requirements are set forth at Minn. Rules, parts 7845.7300 to 7845.7400, which all parties are urged to consult.

ORDER

1. A contested case proceeding shall be held on the Company's certificate of need application.
2. The Department shall initiate an investigation to determine the reasonableness of granting a certificate of need to the applicant. In addition, the Department is encouraged to expedite its preparation of the draft environmental report under guidelines specified in Minn. Rules, Part 4410.7100.
3. NSP shall facilitate the Department's investigation in every reasonable way.
4. The contested case proceeding shall begin with a prehearing conference on Tuesday, November 22, 1994, at 9:30 a.m. in the Small Hearing Room, Public Utilities Commission, 121 7th Place East, Suite 350, St. Paul, Minnesota 55101-2147.
5. At least one public hearing shall be held in this matter at a time and place determined by the Administrative Law Judge after consultation with the Commission Staff.

6. All parties to this proceeding may serve information requests on any other party. Information requests shall be answered within ten days of receipt.
7. NSP shall provide notice of the public and evidentiary hearings in newspapers of general circulation at least ten days prior to the start of the hearings. Such notice shall be in the form of visible display ads. The Company shall consult with Commission Staff on the timing and text of such ads prior to publication. The Company shall file proofs of publication of such ads from the newspapers selected.
8. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(S E A L)

BEFORE THE MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS
Suite 1700
100 Washington Square
Minneapolis, Minnesota 55401-2138

FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION
Suite 350
121 Seventh Place East
St. Paul, Minnesota 55101-2147

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OAH Docket No.

NOTICE OF APPEARANCE

Name and Telephone Number of Administrative Law Judge:

Allan W. Klein
(612) 341-7609

TO THE ADMINISTRATIVE LAW JUDGE:

You are advised that the party named below will appear at the above hearing.

NAME OF PARTY:

ADDRESS:

TELEPHONE NUMBER:

PARTY'S ATTORNEY OR OTHER REPRESENTATIVE:

OFFICE ADDRESS:

TELEPHONE NUMBER:

SIGNATURE OF PARTY OR ATTORNEY: _____

DATE: _____